California Regional Water Quality Control Board
Santa Ana Region
Staff Report
August 26, 2005

ITEM: 14

SUBJECT: Order No. R8-2005-0091 Affirming Administrative Civil Liability Complaint No. R8-2005-0073, Robertson's Star Plant, Incorporated, Anaheim, Orange County *(Postponed from the June 24, 2005 Board Meeting)*

BACKGROUND

On May 23, 2005, the Executive Officer issued Administrative Civil Liability Complaint (ACL) No. R8-2005-0073 (copy attached) to Robertson's Star Plant (Robertson's) for alleged violations of the State General Permit for Storm Water Runoff Associated with Industrial Activity (General Permit). In the ACL, the Executive Officer proposed an assessment of $691,846 for the alleged violations.

INTRODUCTION

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Board), is whether to affirm, reject, or modify the proposed administrative civil liability assessment against Robertson's.

ACL No. R8-2005-0073 was issued by the Executive Officer to Robertson's for the lack of implementation of erosion and sediment control Best Management Practices (BMPs) at Robertson's Star Plant, resulting in the discharge of sediment-laden storm water and unauthorized non-storm water to Gypsum Creek and the Santa Ana River.

DISCUSSION

The General Permit regulates the discharge of storm water from industrial sites, as required under Section 402(p) of the Federal Clean Water Act. Coverage under the permit is obtained by filing a Notice of Intent (NOI), site map, and fee with the State Water Resources Control Board. Robertson's filed a NOI and obtained coverage under the General Permit for this facility on June 16, 1997 (WDID 8 30I011160). The facility is located at 24000 Santa Ana Canyon Road in the City of Anaheim.

a. On February 11, 2005, Board staff conducted an inspection of the facility during a rain event. There had been a previous rain event on February 8th of less than one-half inch, and rain during February 11-13 totaled more than two inches. During this inspection, Board staff

observed a sediment-laden storm water discharge that originated from the quarry area (approximately 100 acres), located just south of the 91 Freeway, which flowed into a corrugated pipe that discharged to Gypsum Creek. Upon further inspection of this area, Board staff noted that the hillside area up-gradient of this discharge point had been extensively graded and that no erosion or sediment control BMPs had been implemented. The lack of adequate BMPs had resulted in the formation of deep erosion rills on the graded hillsides draining to this area. Further, two mounds of sediment (each approximately 15 cubic yards) had been dumped into Gypsum Creek at a road crossing near the entrance to the site. Heavy erosion at the base of these mounds demonstrated the amount of sediment that had already been transported by previous rain events. These discharges constituted violations of Provision B.3 of the General Permit, as no erosion control BMPs were in place, and the sediment control BMPs (sediment basins) present at the facility did not meet the standard required in the General Permit, specifically Best Available Technology Economically Achievable (BAT) and Best conventional Pollutant Control Technology (BCT), to reduce or eliminate storm water pollution. Board staff informed the plant manager that erosion and sediment control BMPs needed to be implemented immediately to prevent any further sediment laden-storm water discharges. Given the large, freshly graded area, Board staff recommended that any detention basins used should be engineered to meet or exceed the sizing criteria set forth in the Statewide General Storm Water Permit for Construction Activities.

b. On February 15, 2005, Board staff conducted a post-storm inspection of the site. While some temporary erosion control BMPs (large plastic tarps) had been installed along some of the western slopes adjacent to Gypsum Creek, the remaining slopes and runoff flow paths lacked both erosion and sediment control BMPs. As a consequence, the rain event of February 13th had mobilized large amounts of sediment and had transported that sediment to Gypsum Creek and subsequently the Santa Ana River. During the inspection, Board Staff observed evidence of several sediment-laden, storm water discharges and unauthorized non-storm water discharges that had occurred since the previous inspection, which occurred on February 11th. While inspecting the two detention basins, which collect runoff from the interior of the site as well as portions of the upper slope area (approximately 150 acres), it was noted that both basins had been improperly constructed and had not been adequately maintained. The basins had been designed with reinforced concrete pipes, installed horizontally through the basin walls without a standpipe. The capacity of both basins had been significantly reduced further by sediment that had not been removed through an adequate maintenance program. As a result of sediment buildup from previous storms, improper

installation, and placement of the outlet pipe, it was evident that storm water entering these basins during the storm event had flowed through the basins with only a minimal residence time and discharged to Gypsum Creek. Furthermore, the lack of erosion and sediment controls upstream resulted in increased sediment loads in the storm water runoff that discharged to these detention basins. Consequently, any remaining capacity of these basins was quickly filled with sediment, resulting in short-circuiting of the basins and an excessive discharge of sediment to the creek.

c. During the February 15, 2005 inspection, it was noted that the series of ponds had been used, while the site was in operation, to contain clays and silts that had been washed from the aggregate had been breached, apparently by excavation equipment, allowing storm water runoff and the mobilized clays and silts to flow out of the ponds, and into Gypsum Creek and subsequently the Santa Ana River.

d. During the February 15, 2005 inspection, it was noted that concentrated storm water flows that occurred on slopes in the upper southeast portion of the mine and the southern perimeter fence line, had caused two large erosion rills. These erosion rills were the result of the recent grading activities and the lack of erosion and sediment controls in this area. Visible erosion rills and scouring could be seen leading directly to Gypsum Creek.

e. Finally, during the February 15, 2005 inspection, it was noted that storm water flows from portions of the mine had flooded out the recycled process/wash ponds at the concrete batch plant, located at the entrance to the site. The storm water runoff commingled with this concrete wash water (for which past analyses have shown a pH of up to 12) and flowed into Gypsum Creek, resulting in an unauthorized non-storm water discharge.

f. On February 18, 2005, Board staff conducted a pre-storm inspection (a major rain event was predicted over the next few days) of this facility. When Board staff arrived at the site, it was noted that no additional erosion control BMPs had been implemented since the prior inspection, but one additional detention basin had been constructed to handle flows from the northern portion of the quarry and the northern slopes. This new basin, like the other four, appeared to be undersized to handle the drainage area (approximately 140 acres) and was not properly engineered to provide sufficient residence times for de-silting. Board staff noted that some efforts had been made to maintain the other detention basins, but because of wet conditions and the volume of accumulated sediment, the maintenance work necessary to remove sediment and restore detention basin capacity had not been

completed. Finally, major flow paths, including roads and the area downstream of an elevated drainage pipe, had no erosion or sediment controls. Robertson's staff were told that with the anticipated severity of the upcoming rain event, significant improvements would have to be made in erosion and sediment controls to protect the site.

g. On February 23, 2005, Board staff conducted an inspection at the end of a six-day, six-inch rain event. Board staff observed several sediment-laden storm water discharges and unauthorized, non-storm water discharges flowing into Gypsum Creek during this inspection. Staff observed that facility staff had still failed to implement any erosion controls on interior slopes or flow paths. As a result of the lack of erosion control BMPs, excessive sediment continued to overwhelm the capacity of the detention basins at the site. The two lower detention basins adjacent to Gypsum Creek were still in need of maintenance, still had improperly constructed drainage systems and again, sediment-laden storm water had flowed directly through the detention basins and discharged into Gypsum Creek and subsequently the Santa Ana River.

h. Finally during the February 23, 2005 inspection, staff noted that pipes had been installed through the berms of several ponds at the top of the facility. This had apparently been done to drain standing water from the ponds. However, no erosion or sediment controls had been implemented to address these concentrated flow paths. The discharge from these ponds was allowed to flow down the main dirt road, through the concrete truck washout pits, and contributed to the flow that had again flooded the process wastewater ponds at the batch plant, commingled with high pH wastewater and resulted in an unauthorized non-storm water discharge to Gypsum Creek.

Robertson's violated General Permit Provision B.3 ("Facility operators covered by this General Permit must reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges through implementation of BAT ... for toxic and nonconventional pollutants and BCT ... for conventional pollutants. Development and implementation of an SWPPP that complies with the requirements in Section A of the General Permit and that includes BMPs that achieve BAT/BCT constitutes compliance with this regulation.").

Pursuant to Water Code Section 13385(c)(2), civil liability may be administratively imposed for the preceding violations by a regional board in an amount not to exceed ten thousand dollars ($10,000) for each violation that occurs each day. Additional liability, not to exceed $10 per gallon, may be imposed for each gallon discharged in excess of 1,000 gallons. The volume of sediment-laden storm water and unauthorized non-storm water discharge was

estimated to be 22,000,000 gallons. Therefore the maximum civil liability that can be imposed is $220,000,000 for nine days of violation.

The Water Code specifies factors the Board shall consider in establishing the amount of civil liability. These factors are discussed below.

1. Nature, Circumstances, Extent and Gravity of the Violations

The lack of implementation of any erosion control BMPs and inadequate implementation of sediment control BMPs at the facility resulted in the discharge of many tons of sediment to Gypsum Creek and the Santa Ana River.

2. Degree of Culpability

This discharger filed a Notice of Intent to come under coverage of the General Permit in 1997. The permit requires the implementation of BAT/BCT controls to eliminate/reduce the amount of pollutants discharged with storm water runoff from the site. The discharger was advised on multiple occasions that BMP implementation, as observed by Board staff, was inadequate to protect the site, and yet failed to take adequate corrective actions. The discharger is fully culpable for the violations noted above.

3. Economic Benefit or Savings, if any, Resulting from the Violations

Staff has estimated that the facility has saved approximately $374,996 by not implementing appropriate BMPs and by not providing employees with proper training.

4. Prior History of Violations

This facility has been the subject of numerous formal and informal enforcement actions including: one Administrative Civil Liability Complaint (ACL) for $27,800, five (5) Notices of Violation (NOV) and frequent oral warnings. Within this Region, Robertson's-owned facilities have received a total of two (2) ACLs totaling $52,800, fourteen (14) NOVs and numerous oral warnings.

5. Other Matters as Justice May Require

Regional Board staff spent at least a total of 98 hours investigating these incidents (@$70.00 per hour, the total cost for staff time is $6,860).

6. Ability to Pay the Proposed Assessment

Robertson's has 34 facilities throughout Southern California and has a fleet of over 750 ready-mix trucks. The discharger has not provided any information to indicate that it is unable to pay the proposed amount.

STATEWIDE ENFORCEMENT POLICY

On February 19, 2002, the State Water Resources Control Board adopted a Revised Water Quality Enforcement Policy to ensure that enforcement actions throughout the State are fair, firm and consistent. The above-described administrative civil liability complaint is in accordance with the Statewide Enforcement Policy.

RECOMMENDATION

After consideration of the above factors, staff recommends that the Board adopt Order R8-2005-0091, affirming the assessment of $691,846 specified in Administrative Civil Liability Complaint No. R8-2005-0073, issued by the Executive Officer on May 23, 2005.